



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WFC/172328

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2016, under Wis. Admin. Code §HA 3.03 (1);, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on April 06, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeal has jurisdiction to decide the petitioner's eligibility for payment of Wis. Stat. §49.785 funeral expenses when the petitioner never submitted an application for Wisconsin Funeral and Cemetery Aids Program (WFCAP).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

The petitioner is deceased.

[REDACTED] appeared on his behalf.

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By Letter: [REDACTED]

Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. The petitioner died on January 30, 2016. Prior to the petitioner's death, the petitioner received BadgerCare (BC) Plus benefits under the core plan as a childless adult. The petitioner was also a recipient of FS benefits.
3. On February 1, 2016 the petitioner's mother called the Wisconsin Funeral and Cemetery Aids inquiring about funeral aide for the petitioner. Later that same day the petitioner's funeral home called the program inquiring about funeral aide for the petitioner. The program verified that the petitioner was not receiving benefits from any program that would make him eligible for payment of funeral expenses under Wis. Stat. §49.785.
4. On February 26, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. Wis. Admin. Code DHA § 3.03(1) allows recipients and potential recipients of public assistance benefits to appeal adverse actions. The problem with this case is that there was no application for funeral aide. Because there was no application, there was also not an adverse action, for which I would have jurisdiction to decide.

At the hearing it appeared that the petitioner's mother was seeking clarification regarding WFCAP benefits. Wisconsin law provides that if an indigent recipient of W-2 benefits, SSI, or Medical Assistance as a result of being categorically eligible, dies, the county agency will pay a portion of the funeral, cemetery or burial expenses. Wis. Stat. §49.785(1). The statute sets a limit on "cemetery" expense reimbursement, and a limit on "funeral/burial" expense reimbursement. *Id.* To be eligible for this benefit, the statute directs that the recipient must have been receiving benefits from one of several specific programs. *Id.* BadgerCare Plus Core plan for a childless adult is not one of the benefit programs that would make a person eligible for WFCAP benefits. The manual specifically states:

The Department will not reimburse cemetery/funeral expenses for a person who on the date of death was receiving or qualified for:

6. BadgerCare Core Plan Childless Adults/transitional Core Plan members,

Wisconsin Funeral and Cemetery Aids Program Manual, §1.2, at <http://www.emhandbooks.wisconsin.gov/wfcap/fcap.htm>. (April 2016).

Although the petitioner never applied for WFCAP benefits, and I do not have jurisdiction, if the petitioner had applied, the Department would have correctly denied his application for WFCAP benefits. BC Plus for childless adults is an MA program, but is not a program that makes a person eligible for WFCAP benefits. FS benefits is not even an MA program, and therefore not even included when discussion WFCAP eligibility as that applies only to some MA programs. People receiving BC Plus as a childless adults and FS benefits are specifically ineligible for WFCAP benefits.

CONCLUSIONS OF LAW

The Division of Hearings and Appeal does not have jurisdiction to decide the petitioner's eligibility for payment of Wis. Stat. §49.785 funeral expenses when the petitioner never submitted an application for Wisconsin Funeral and Cemetery Aids Program (WFCAP).

THEREFORE, it is

ORDERED

That the petitioner is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of April, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 6, 2016.

Division of Health Care Access and Accountability
Wisconsin Funeral and Cemetery Aids Program - DHS